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June 11, 1999

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Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
The Portals
445 12th Street, SW
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

98-192

**Re: Ex Parte Notification
Direct Access to the INTELSAT System
IB Docket No. 98-122; File No. 60-SAT-ISP-92**

Dear Ms. Salas:

BT North America ("BTNA") has argued that the Commission has statutory authority to implement Level 3 and Level 4 direct access, and that implementation of either regime would result in increased competition in the U.S. satellite services market and reduced costs. In this letter, BTNA responds to a recent COMSAT Corporation ("COMSAT") *ex parte* notification concerning their interest in INTELSAT Utilization Charges ("IUCs") under a Level 3 direct access regime.¹

The *COMSAT April 30 Letter* argues, in essence, that the FCC should preserve their current financial expectations as the monopoly provider of INTELSAT space segment in the U.S. COMSAT objects that at the same time they will be required to make investments in INTELSAT plant and facilities in proportion to total U.S. utilization (of both COMSAT and all Level 3 users), the new direct access customers would seek to obtain space segment at the lowest possible IUC charge, which in turn would decrease the rate of return COMSAT obtains for their INTELSAT investment. This potential for decreased profit margins is exactly what one would expect in an open competitive environment. COMSAT's position of protecting the margins to which it has become accustomed can only succeed at the expense of competitors, consumers and sound telecommunications policy.²

¹ April 30, 1999 Letter from Howard D. Polsky to Magalie Roman Salas ("*COMSAT April 30 Letter*").

² See *MCI Telecommunications Corp. v. FCC*, 561 F.2d 365, 380, cert. denied, 434 U.S. 1040 (1978) ("*Execunet I*") ("The ultimate test of industry structure in the communications common carrier field must be the public interest, not the private financial interests of those who have until now enjoyed the fruits of de facto monopoly.").

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Most troubling, COMSAT's explicit premise is that they have an incentive to maintain an artificially high IUC purely to boost their own investment return. They protest that a Level 3 direct access regime will create an environment where U.S. carriers work with foreign carriers to exert downward pressure on the equal IUC that all INTELSAT users pay. COMSAT's position is squarely in conflict with the public interest. An environment where private sector competition pushes charges towards the cost of providing service is precisely the result that standard Commission policy aims to achieve.³ Artificial preservation of high supply costs to carriers clearly is not in the interest of consumers.

COMSAT is wary that U.S. carriers will seek lower IUC rates by means of undue bargaining power that they would use when negotiating space segment contracts with INTELSAT. Yet COMSAT correctly acknowledges that the INTELSAT Board of Governors currently must approve all changes to IUC charges.⁴ The intermediation by the Board of Governors ensures that even carriers with "significant bargaining power" have no ability to negotiate directly with INTELSAT for preferential IUC rates. Even if pressure from U.S. carriers resulted in a position paper to the Board of Governors, then any proposals in such a paper would only be implemented with Board approval, subject in large measure to COMSAT's own 19.8% vote. Furthermore, any commercial leverage that U.S. carriers may deploy in attempting to reduce the IUC should be viewed as a desired derivative of competition.

An additional issue in COMSAT's letter is their stated apprehension with being required to make INTELSAT investments based on increased U.S. usage under a Level 3 regime. When considering this argument please note that COMSAT would not be required to make such investments if – as BTNA urges – the FCC approves a Level 4 regime that would allow U.S. direct access users to make a capital investment in proportion to their own utilization. Separately, even under a Level 3 regime, COMSAT's forward-looking anxiety about being inadequately compensated on such investments does seem at odds with any regulatory risk analysis they may have performed in association with their decision in recent months to voluntarily increase their INTELSAT holdings.⁵ A rational view of COMSAT's recent investment decisions suggests that they don't fear their future return on investment to be as bleak as is suggested in the *COMSAT April 30 Letter*.⁶

³ Cf., *Non U.S. Licensed Satellites providing Domestic and International Service in the United States*, 12 FCC Rcd 24094 (1997); *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, 12 FCC Rcd 23891, at ¶3 (1997) ("Both orders are guided by the common objective of promoting competition in the U.S. market, and of achieving a more competitive market for all basic telecommunications services.")

⁴ *COMSAT April 30 Letter* at 2.

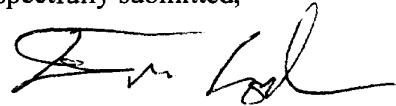
⁵ "COMSAT Increases Ownership of INTELSAT System," PR Newswire, Mar. 30, 1999. After increasing its ownership by approximately 2 percent, COMSAT President and CEO Betty Alewine stated that the investment "makes good business sense, and the corporation expects to see a strong return on this investment." *Id.*

⁶ As BTNA has stated in prior filings, COMSAT should be able to operate at a fair profit in a direct access environment with a far smaller pre-tax return on investment than the 28% minimum to which they assert they are entitled. See *Reply Comments of BT North America*, IB Docket No. 98-192 at 27-30 (Jan. 29, 1999).

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The rapid introduction in the U.S. of Level 3 and Level 4 direct access will benefit consumers of international telecommunications services by maximizing competition in the provision of such services over INTELSAT facilities. The arguments in the *COMSAT April 30 Letter* provide no basis to deter the Commission from confirming its tentative conclusions that it can and should implement direct access at the earliest opportunity for all INTELSAT services and for all U.S. carriers. Full implementation will send a positive signal to all INTELSAT members about the U.S. commitment to INTELSAT reforms and will help advance the privatization process.⁷

Respectfully submitted,

A handwritten signature in black ink, appearing to be a cursive combination of the names Cheryl L. Schneider and Eric H. Loeb.

Cheryl L. Schneider
Eric H. Loeb

cc: Don Abelson
James Ball
Roderick Porter
Sande Taxali

⁷ See *Hearing on S.376, Open –market Reorganization for the Betterment of International Telecommunications Act*, Subcommittee on Communications, Committee on Commerce, Science, and Transportation, 106th Cong. (March 25, 1999) (statement of Richard Vos, Head of International Satellite Consortia for British Telecommunications plc).